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SUBJECT: BYSTROE CANAL: ROMANIA WELCOMES UN FINDINGS

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¶1. (SBU) Summary: Romania welcomed the unanimous findings released by a special UN Inquiry Commission noting the negative trans-boundary impact of Ukraine's dredging in Bystroe Canal. Romanian officials now expect Ukraine to initiate public and cross-border consultations on this sensitive environmental issue before continuing to dredge open a second shipping lane up the Danube Delta. The Ukrainian Embassy said it is waiting for a translation of the findings into Ukrainian before it offers any comment. It remains to be seen how well the two countries will cooperate on assessing and mitigating the environmental impact of the Bystroe Canal, and whether Ukraine will continue the project at all. Romania still wants the project stopped. End Summary.

¶2. (SBU) Romanian MFA Director General for Legal Affairs, Cosmin Dinescu, relayed to PolOff on July 11 Romania's eagerness to see Ukraine abide by the July 10 UN Economic Commission for Europe (UNECE) Inquiry Commission's finding regarding the negative trans-boundary environmental effects of Ukrainian dredging in Bystroe Canal. Dinescu, who has the lead on this dispute for Romania, described the commission's finding as "compulsory and legally binding." He said that Romania now expects Ukraine to consult Romania according to the Espoo Convention before proceeding with any further dredging in Bystroe Canal. Dinescu mentioned that the ruling would also now force Ukraine to consult its own public, according to the Aarhus Convention. These views were shared by MFA Director General for Global Affairs and International Organizations Stelian Stoian, who opined to PolChief that the UN findings will make it easier for the Ukrainian government to end the domestic debate over the canal, as many interests in Ukraine have continued to push for the project's completion. Stoian reiterated Romania's position that the project should be terminated, with no more dredging.

¶3. (U) The UNECE Inquiry Commission's finding in favor of Romania on Ukraine's dredging of the Bystroe Canal represents the first time the Convention on Environmental Impact Assessment in a Transboundary Context has been ruled to apply since countries signed it in Espoo, Finland, in 1991. The Inquiry Commission formed as a result of Romania's 2004 complaint to the UNECE that Ukraine had failed to abide by the Espoo Convention before beginning to dredge Bystroe Canal; Ukraine claimed that the Espoo Convention did not apply since the work was being performed on Ukrainian territory. The Inquiry Commission, composed of Ukrainian, Romanian, and independent experts, unanimously concluded that the Espoo Convention applies since there is "likely significant adverse trans-boundary impact" from the dredging

of Bystroe Canal. Specific significant environmental effects cited included the loss of floodplain habitats important for fish spawning and bird nesting, the downstream impact on fish from the increased concentration of suspended sediment, and the muddier waters resulting from dumping sediment in the Black Sea. The full report of the Commission can be found at www.unece.org/env/eia/documents/inquiry.htm.

¶4. (SBU) Both Stoian and Dinescu believed Ukraine would comply with the finding and pointed to Ukrainian Foreign Minister Tarasyuk's July 4 meeting with FM Ungureanu in Odessa, where both parties "agreed to take into account in good faith the conclusions of the International Inquiry Commission." Neither Stoian nor Dinescu saw any way that Ukraine could fail to abide by the Commission's findings after both Foreign Ministers committed in public to abide by the Inquiry Commission's findings. The meeting of the two Foreign Ministers took place pursuant to an agreement Presidents Basescu and Yushchenko reached during a bilateral meeting held on the margins of the June 5 Black Sea Summit in Bucharest. The Foreign Ministers discussed other sensitive bilateral issues, including the status of the continental shelf and Snake Island, and the rights of Ukrainian and Romanian ethnic minorities in their respective countries, according to the official protocol of the meeting as posted on the Ukrainian MFA's website.

¶5. (SBU) Ukraine has almost completed the first stage of dredging the canal, begun in 2004. However, Dinescu said that sediments from recent flooding have set back Ukrainian efforts to about the same point they were when the project began. Now that the UNECE Inquiry Commission ruled there were "likely significant adverse trans-boundary effects," Romania awaits Ukraine's environmental impact assessment and opportunity for public consultation that it did not receive before the dredging began. The Ukrainian Embassy in Bucharest told PolOff that it was waiting for the

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Commission's report to be translated into Ukrainian before commenting on it, even though the original text in English is available on the internet. Both the Ukrainian Embassy and Dinescu explained that little interaction goes through the Ukrainian Embassy on this subject, but instead the Romanian Embassy in Kiev deals directly with the Ukrainian Ministry of Transport and the state-owned company Delta Prospect.

¶6. (U) The three mouths of the Danube River form the second largest river delta in Europe, next to the Volga Delta in the Caspian Sea. The Danube Delta was designated an Internationally Important Wetland and World Heritage Site in 1991, and a UNESCO Biosphere Reserve in 1992 due to its importance to millions of migratory birds. Only the Danube's Sulena arm, which flows through Romania, is navigable for larger ships. Romania does not charge any taxes for shipping up the Danube according to the Belgrade Convention of 1948, but does charge pilotage fees and non-discriminatory navigability fees for regular dredging. Dinescu said the pilots receiving the pilotage fees for managing the river's more difficult navigation were currently all Romanian, but that they could be from any nationality. Besides shortening routes to the Ukrainian ports of Izmayil and Reni, Dinescu discounted any economic importance or viability of opening up a second shipping lane in the Danube Delta through Ukraine's Bystroe Channel.

¶7. (SBU) Comment: The joint statement issued by the Romanian and Ukrainian foreign ministers in Odessa and attempts to find mutually agreeable solutions to bilateral problems, even if through UN and ICJ arbitration, have helped map out the means for the two states to work out their differences on at least some of these sensitive questions. How the two now cooperate on assessing and mitigating the environmental impact of Bystroe Canal will be an indicator of whether the two Black Sea states can begin to constructively resolve such sensitive issues. We wonder now also to what extent the

ongoing changes in Kiev's political complexion will moot these recent gains in the Ukrainian-Romanian dialogue. One way or the other, our Romanian interlocutors view this as a clear win for the Romanian side that they believe will lead to an end to the Bystroe Canal project once and for all. End Comment.

18. (U) Amembassy Bucharest's reporting telegrams are available on the Bucharest SIPRNet website:

www.state.sgov.gov/p/eur/bucharest

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